Background and Talking Points

Silver Bow Creek/Butte Area Superfund Site
Administrator's call with Senator Tester (D-MT)

BACKGROUND

Please insert some background information on the site. I reviewed my whole file and can't find a good background paragraph. Refer to the Email Andrea had sent with the Briefing paper attached for additional background info.

The Region 8 Deputy Regional Administrator and staff held a conference call with Senator Tester's staff on 2/4/16 and Region 8 staff held a second conference call with Senator Tester's staff on 2/23/16. Senator Tester's staff raised concerns that there is still "broad misunderstanding" of the future potential Superfund listing and the Superfund Alternative Process. The Senator's staff continue to field questions, and they do not believe they can provide appropriate and complete responses, and are looking to EPA to help clear up misunderstandings within the community.

Anticipated Questions and Responses:

Question: What outreach has EPA done regarding the future potential NPL listing and the Superfund Alternative Process? *I'm trying to combine topics here – let me know if this language works.*

Response:

- [Mike did you talk about the SAA in prior meetings? ~~If so, please note here~~RPM Mike Cirian had discussed the SAA at the CFAC Community Liaison Panel meeting back in November as well. Each time it was discussed in the context that it will be evaluated and determine if it is eligible, and appropriate for use on this site.]
- RPM Mike Cirian and CIC Cynthia Peterson attended a meeting of the CFAC Community Liaison Panel on January 21, 2016. Since that meeting, Cirian:
  - ~~RPM Mike Cirian~~ Hhas spoken w/ Phillip Mitchell Flathead County Commissioner, Mayor Don Barnhart, City Manager Susan Nicosia, City Council Member Dave Peterson
  - Also spoken w/ Hungry Horse News (Chris Peterson), Daily Interlake (Lynette Hintze), Flathead Beacon (Dillon Tabich) and ABC Fox – Kalispell (McKinzie Allen)
  - In addition, has spoken w/ Sen. Tester's Office (Chad Campbell and Smith Works), Sen. Daines' office (Kyle Schmauch) and Rep. Zinke's office (John Fuller)
  - ~~*Please update with information on Mike's recent meetings*~~. Per request from Chad Campbell, RPM Cirian contacted the Columbia Falls City Council, to confirm the Columbia City Council wanted Mike to attend and address questions the Council had about SAA. Correspondence received from the Council "The council found your answers very helpful and informative" was sent to RPM via email.

Question: What else can we do to the get word out to the community?

Response:

- ~~*Please update with our commitments to write some fact sheets.*~~ EPA will develop a fact sheet(s) with information regarding the NPL listing process and the Superfund Alternative approach.

- EPA will look for opportunities to work with local media to educate the public and correct misinformation, such as background interviews with reporters, letters to the editor, op-ed pieces and paid advertising.
- EPA has been planning hosting a public meeting later this spring. This meeting is in response to some community members wanting to be updated on the project status as well as sharing more information on the Superfund process and we will discuss the SAA as well.
- The CFAC Liaison Panel has a mailing list as does EPA. EPA could send a notice to both mailing lists that the site will not be listed before fall, 2016

Question: What is the status of the listing process for this site?
Response:
- EPA proposed the site for listing on 3/26/2015, and received 77 public comments
- After reviewing the public comments, EPA has determined that the site still qualifies for listing
- EPA will not finalize the listing before fall, 2016
- We will keep your office and state and local officials as well as the community apprised of the status of EPA's efforts to finalize the listing

Question: What is the Superfund alternative approach?
Response:
- The SA approach is the other main **approach** EPA has for addressing a Superfund site that needs a long-term (remedial) cleanup
- The SA approach uses the same investigation / cleanup process and standards that are used for NPL-listed sites, but is not eligible for Superfund program financing for RD/RA
- The SA approach is an alternative **approach** to listing a site on the NPL; it is *not* an alternative to Superfund or the Superfund process

Question: What are the criteria for using the Superfund alternative approach?
Response:
- There are three threshold eligibility criteria:
  - 1. Site contaminants are significant enough for site to be eligible for listing (HRS score ≥28.5)
  - 2. A long-term response (*i.e.*, a remedial action) is anticipated at the site, and
  - 3. There is a *willing, capable PRP* who sign an agreement to perform the investigation or cleanup
- EPA has discretion to determine if the SA approach is appropriate at a particular site, but all three criteria must be satisfied in order for this approach to be available at a site
- EPA R8 is taking a hard look at the criteria to determine whether the site meets the eligibility criteria

Question: What are the differences between NPL and the Superfund alternative approach?
Response:
- EPA will follow the same investigation and cleanup process and standards regardless of whether the site is listed on the NPL or designated as a SA approach site
- EPA also will use the same binding legal agreements for RI/FS and RD/RA
- Now that CFAC has entered into an AOC for the RI/FS, EPA has firm assurance that CFAC will perform the RI/FS under a legally binding agreement, backed by a $4M letter of credit
  - However, this agreement only covers the RI/FS and not RD/RA

- ***The cleanup stage (RD/RA) is where NPL listing status becomes important**: If CFAC is unable or unwilling to perform RD/RA (with financial assurance) in a judicial CD, EPA cannot tap Superfund remedial financing and later cost recover against PRPs IF the site has not been listed
- EPA would then have to re-start the NPL listing process by possibly freshening data supporting the listing package, which may result in a delay in remedy implementation

Media Links:
http://www.flatheadnewsgroup.com/hungryhorsenews/council-says-cfac-superfund-listing-is-ok-by-them/article_6100d8f0-ca8c-11e5-9a43-b342efb62d47.html
http://flatheadbeacon.com/2016/01/30/county-supports-alternative-superfund-cfac/
http://flatheadbeacon.com/2016/01/26/epa-pushes-back-cfac-superfund-designation-to-fall/